Office-Supreme Court, U.S.
FILED
JAN 9 1963
JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

Nos. ~~107~~ and ~~108~~ 17 & 18

WALTER HUMPHREY, ETC., ET AL,
Petitioners,

v.

C. W. MOORE, ETC., ET AL, GENERAL DRIVERS, WAREHOUSEMEN, AND HELPERS, LOCAL UNION NO. 89, AND DEALERS TRANSPORT COMPANY,
Respondents,

and

GENERAL DRIVERS, WAREHOUSEMEN AND HELPERS, LOCAL UNION NO. 89, Petitioner,

v.

C. W. MOORE, ET AL
Respondents.

BRIEF OF DEALERS TRANSPORT COMPANY IN RESPONSE TO THE PETITIONS FOR A WRIT OF CERTIORARI

Newell N. Fowler
81 Madison Building
Memphis, Tennessee
Earl W. DeHart
81 Madison Building
Memphis, Tennessee
Counsel for Respondent,
Dealers Transport Co.

TODD-MEMPHIS

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

Nos. 407 and 408

WALTER HUMPHREY, ETC., ET AL,
Petitioners,

v.

C. W. MOORE, ETC., ET AL, GENERAL DRIVERS, WAREHOUSEMEN, AND HELPERS, LOCAL UNION NO. 89, AND DEALERS TRANSPORT COMPANY,
Respondents,

and

GENERAL DRIVERS, WAREHOUSEMEN AND HELPERS, LOCAL UNION NO. 89, Petitioner,

v.

C. W. MOORE, ET AL
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BRIEF OF DEALERS TRANSPORT COMPANY IN RESPONSE TO THE PETITIONS FOR A WRIT OF CERTIORARI

QUESTIONS PRESENTED

1. Whether a suit brought by individual employees in a state court against a labor organization and an employer, parties to a collective bargaining agreement, to enjoin their enforcement of an arbitration award rendered pursuant to such an agreement is within the purview of Section 301 of the National Labor Relations Act so as to require that the law applied in reaching a decision be consistent with the body of federal labor law.

2. Whether a state court's jurisdiction over the above-described cause of action is pre-empted by the exclusive jurisdiction of the National Labor Relations Board in that enforcement of the arbitrational award might result in conduct arguably prohibited by Section 8 of the National Labor Relations Act.

3. Whether individual employees have standing to bring a suit within the purview of Section 301 in a state court.

4. Whether a state court's decision in the above-described action is inconsistent with the national labor policy where such decision set aside an arbitration award on the ground that, under the terms of the collective bargaining agreement, the matter considered by the arbitration committee was not in fact arbitrable and that, if the matter were to be considered arbitrable, the award of the arbitration committee was nevertheless arbitrary and erroneous.

STATEMENT OF THE CASE

It appearing that the facts set forth in the opinion of the Court of Appeals of Kentucky are substantially accurate and complete and it further appearing that the questions presented in this matter are essentially questions of law, Dealers Transport Company, in an effort to prevent this Court's having to duplicate its efforts, accepts those facts as an adequate statement of the case.

ARGUMENT

The Plaintiffs in the court below are employees of Dealers Transport Company and as such they are subject to the terms of the collective bargaining contract between that employer and the bargaining representative of its employees, General Drivers, Warehousemen and Helpers, Local Union No. 89. In their complaint in the lower court

these employees sought court relief to insure their retention of certain rights which they contended inured to them under the terms of the collective bargaining agreement. It would appear that such a cause of action would fall directly within the ambit of Section 301. This being the case it would appear incumbent upon the lower court in exercising jurisdiction to apply federal labor law under this court's decision in *Lucas Flour Company.*[1]

Since this court's decision in *Dowd Box Company* v. *Courtney,* 368 U.S. 502, little doubt remains as to the concurrent jurisdiction of the state and federal courts in matters arising under Section 301. However, the question of pre-emption by the exclusive jurisdiction of the National Labor Relations Board remained opened until this court's recent decision in *Smith* v. *Evening News Association.*[2] In that case an employee sued his employer in a state court for back pay arising from the employer's refusal during a strike to pay wages to the employee who was a member of a union having a collective bargaining contract with the employer even though wages were paid to other non-striking non-union employees. In reversing and remanding to the state court which had dismissed the suit for lack of jurisdiction Mr. Justice White, speaking for the majority of the court, said:

> *Lucas Flour* and *Dowd Box,* as well as the later *Atkinson* v. *Sinclair Refining Co.,* 370 U.S. 238, were suits upon collective bargaining contracts brought or held to arise under Section 301 of the Labor Management Relations Act and in these cases the jurisdiction of the courts was sustained although it was seriously urged that the conduct involved was arguably protected or prohibited by the Labor Management Relations Act and therefore within the exclusive jurisdiction of the National

Labor Relations Board. In *Lucas Flour* as well as in *Atkinson* the Court expressly refused to apply the pre-emption doctrine of the *Garmon* case; and we likewise reject that doctrine here where the alleged conduct of the employer, not only arguably, but concededly, is an unfair labor practice within the jurisdiction of the National Labor Relations Board. The authority of the Board to deal with an unfair labor practice which also violates a collective bargaining contract is not displaced by Section 301, but it is not exclusive and does not destroy the jurisdiction of the courts in suits under Section 301. If, as respondent strongly urges, there are situations in which serious problems will arise from both the courts and the Board having jurisdiction over acts which amount to an unfair labor practice, we shall face those cases when they arise. This is not one of them, in our view, and the National Labor Relations Board is in accord.

1/ Local 174, Teamsters v. Lucas Flour Company, 369 U.S. 95.
2/ No. 13, October Term, 1962, decided December 10, 1962.
3/ 356 U.S. 617

We therefore respectfully submit that the decision of the Court in the *Evening News Association* case is binding in regard to the question of pre-emption by the Labor Management Relations Act.

Insofar as the Court may wish to consider upon the question of pre-emption that portion of the complaint below dealing with the matter of alleged arbitrary representation by the collective bargaining representative, the decision in *Association of Machinists* v. *Gonzales*[1] appears apposite. There a union member sued in a state court for damages and restoration of membership due to his illegal expulsion from the union. In affirming the state court's judgment ordering reinstatement and payment of damages,

this Court recognized that the action was premised not on the ground that the union's conduct was designed to effect employer discrimination against an employee, the issue customarily treated by the Board under Section 8 (b) (2), but rather was grounded upon the matter of discrimination by the union against the individual as a member of the labor organization. We submit that a parallel may be drawn between that case and the instant proceeding, recognizing that the present case involves an attempt to enjoin action by the collective bargaining representative which may affect the employment tenure in an atmosphere in which the employer is neutral as to such action.

With regard to the question whether an individual employee has standing to bring a suit within the purview of Section 301 the decision of the Court in *Evening News Association, supra,* again appears dispositive. There the Court in refusing to restrict the scope of Section 301 to suits between an employer and a labor organization said:

> The concept that all suits to vindicate individual employee rights arising from a collective bargaining contract should be excluded from the coverage of Section 301 has thus not survived. The rights of individual employees concerning rates of pay and conditions of employment are a major focus of the negotiation and administration of collective bargaining contracts. Individual claims lie at the heart of the grievance and arbitration machinery, are to a large degree inevitably intertwined with union interests and many times precipitate grave questions concerning the interpretation and enforceability of the collective bargaining contract on which they are based. To exclude these claims from the ambit of Section 301 would stultify the congressional policy of having the administration of collective bargaining

contracts accomplished under a uniform body of federal substantive law. This we are unwilling to do.

On the basis of this decision it appears and we respectfully submit that the individual employees had standing to bring the action in the court below.

As correctly noted by the court below the position of Dealers Transport Company in this matter has been one of neutrality. It desires to remain neutral. Therefore, while we have attempted to respond to those questions presented by the petitions pertaining to jurisdiction and the standing of the parties, we respectfully choose to take no position on the lower court's disposition of the matter on the merits.

CONCLUSION

In sum, we respectfully contend that the subject matter of the suit in the court below is within the purview of Section 301 of the National Labor Relations Act and that the law applied in reaching a decision must be consistent with the body of federal labor law. Further, on the basis of the authorities cited, we contend that the lower courts jurisdiction is not pre-empted by the exclusive jurisdiction of the National Labor Relations Board and that the individual employees, plaintiffs below, had standing to bring such an action.

Respectfully submitted,

Newell N. Fowler
81 Madison Building
Memphis, Tennessee

Earl W. DeHart
81 Madison Building
Memphis, Tennessee

Certificate of Service

I certify as attorney of record for Dealers Transport Company in the above-styled and numbered cause in this Court that I have this day had mailed by air mail, postage prepaid, to David Previant, 511 Warner Building, Milwaukee 3, Wisconsin, Mozart G. Ratner, 1411 K Street, N.W., Washington, D.C., and to John Young Brown, 601 Security Trust Building, Lexington, Kentucky, counsels respectively for the Petitioners in Case No. 408, the Petitioners in Case No. 407, and the Respondents C. W. Moore, etc., et al, at their said proper post office addresses, two true copies each of this Brief in Response to the Petitions for a Writ of Certiorari.

This 8th day of January, 1963.

Newell N. Fowler

Newell N. Fowler
81 Madison Building
Memphis, Tennessee